

Date: June 22, 2009

General Fund

Dept: Non-Departmental

Description	Account Number	Original Budget	Increase/ (Decrease)	Amended Budget
Non-Departmental- Professional Services	1059000- 51355	180,000.00	25,000.00	205,000.00
Appropriated Fund Balance	1044000- 49000	3,892,279.47	25,000.00	3,917,279.47

To amend for adjustments needed at FY end 6/30/09.

Dear Counsel:

As a preface, let me state that both attorneys did an excellent job in arguing the issues before the court. As I reached my decision, I kept one over-arching legal consideration in mind: the North Carolina appellate courts require the trial judge to accord great deference to the local legislative body in matters involving zoning, since zoning decisions are part of the police power function of the County Commissioners. Under NCGS Sec. 153A-69, the commissioners' statutory authority to designate the site must be unreasonable, arbitrary, unduly discriminatory, or an unequal exercise of power before it can be overturned or set aside.

Keeping this in mind, the following statutory mandates and the appellate decisions that interpret them are also applicable to this lawsuit:

Under NCGS Sec. 153A-341, "The planning board shall advise and comment on whether the proposed amendment is consistent with [the] comprehensive plan that has been adopted ... The planning board shall provide a written recommendation to the Board of County Commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board."

There was much time devoted to the argument by Mr. Powell that after the planning board meeting on September 8, 2008, the minutes of that meeting were incomplete and a statement of zoning consistency had not been prepared. The argument was advanced that this was fundamentally unfair to the plaintiffs. However, under my reading of Sec. 153A-341, the lack of a statement of plan consistency is analogous to, or the logical equivalent of, a statement of plan *in*consistency. Viewed in such light, and keeping in mind that the planning Board is merely an advisory board which makes recommendations to the board of commissioners, the commissioners were not precluded from considering or approving the proposed amendment even *if* there was no accompanying statement of plan consistency. Regardless of whether the planning board minutes were an incomplete draft during the days leading up to the Commissioners' meeting, the record shows that Kim Bates did read the "statement of zoning consistency" to the Board at the Commissioners' meeting of September 15, 2008. Under Sec. 153A-341, the "statement of zoning consistency" is not subject to judicial review.

I am somewhat sympathetic to the plaintiffs' argument that they did not receive notice of the planning board meeting or its agenda prior to September 8, but I can find no authority in the statute books which would have required the planning board to give public notice of its meeting or its agenda, particularly when the planning board was meeting at its regularly-scheduled time of the month. I agree with Mr. Phillips that the only statutory law upon which the plaintiffs could base their argument is the Open Meetings law, and there is indeed a very short statute of limitations involving a request for a remedial action under NCGS Sec. 143-318.16(a), which the plaintiffs missed. I am also mindful of article 2, section 5C, which appears to be applicable here: "Administrative appeals may

be taken to the Board of County Commissioners by any person ... aggrieved ... Appeals shall be filed within thirty days from the date of the action being appealed."

I agree with Mr. Phillips that Article 4, section 3 of the Yadkin County ordinances do not appear to apply to conditional use cases. Instead, Article 16 is the operative portion of the ordinances, with sections 6 and 7 governing the actions of the planning board and the Board of Commissioners.

Based upon the above considerations, I am persuaded that it is appropriate for me to dismiss the Plaintiffs' lawsuit, pursuant to the Defendant's motion for Summary Judgment. Mr. Phillips is to prepare a draft order and after it has been reviewed and approved by Mr. Powell as to its form, please e-mail the order to me and I will sign it and send it to the Yadkin County clerk of court for filing and distribution.

Thanking you, I remain,
Sincerely yours,

Judge Craig